

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

John Elliot,
Plaintiff,

v.

The United States of America,
Defendant.

Civil Action Pursuant to 28 U.S.C. § 1346
Federal Torts Claim Act (FTCA)

FILED
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3:17cv 2227

Comes now, the plaintiff John Elliot Reg. No. 14797-032, pursuant to 28 U.S.C. § 1346 Federal Torts Claim Act (FTCA). The plaintiff here-in is suing the United States of America (Bureau of Prisons) pursuant to the FTCA based on the following facts, evidence and exhibits.

Venue/ Jurisdiction

A party such as plaintiff that brings a claim under the FTCA must satisfy the threshold requirement of 28 U.S.C. § 1346(b)(1), which includes the following six(6) criteria:

A claim must be made (1) against the United States, (2) for money damages, (3) for injury or loss of property, or personal injury or death, (4) caused by the negligent or wrongful act or omission of any employee of the government, (5) while acting within the scope of his office or employment, (6) under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

IN THE INSTANT CASE plaintiff satisfies all of the aforementioned requirements of 28 U.S.C. § 1346(b)(1): (1) since claim is being brought against United States Penitentiary at Lewisburg which is under the Bureau of Prisons of the United States of America; (2) for damages in the amount of \$100 a day for each day of event plaintiff (3) suffered personal injury from Salmonella Poisoning (4) caused by the wrongful acts of staffed employed by B.O.P. at Lewisburg while (5) working and supervising the kitchen and Health Services Departments (6) in Lewisburg, PA.

Additionally, pursuant to 28 U.S.C. § 1391(b) which defines proper Venue in which an action should be brought:

Be brought only in (1) a Judicial district where any defendant resides, if all defendant resides in same state (2) a judicial district in which a substantial part of the events or omi-

ssions giving rise to the claim occurred, or substantial part of the property that is the subject of the action is situated.

In this case this Court has jurisdiction over the matter since:

- (1) venue is proper in this court, as the events giving rise to plaintiff's claim occurred within the Middle District of Pennsylvania 28 U.S.C.81391(b)(2).
- (2) All defendants of complaint resides in the Middle District of Pennsylvania.
- (3) And since Lewisburg Penitentiary is governed by the Bureau of Prisons which is the Federal Government as defined by the FTCA and located in the Middle District of Pennsylvania, this Court must apply the law of the common wealth of Pennsylvania.

In order to establish liability in a Tort Claim for negligence, Pennsylvania Law requires the following four(4) elements satisfied: (1) duty of care, (2) the breach of duty, (3) a casual connection between the conduct and the resulting injury, and (4) actual loss or damages resulting to plaintiff.—Farabaugh v. PA. TPIC. Commn 590 pa. 46, all A.2d 126¹¹; 1272-73 (Pa. 2006).

The plaintiff has therefore satisfied Venue/ Jurisdiction, and now seeks relief based upon the following events and facts in accordance with Pennsylvania negligence laws.

Facts in Support of Complaint

On or about November 27th, 2016, plaintiff started complaining of symptoms of diarrhea, abdominal cramps, fever and other abnormal issues with his health. (See exhibit 1)

On November 30th, 2016, the administration at Lewisburg Penitentiary posted a memo of gastrointestinal conditions among the inmate population. (See Exhibit 2(a) & 2(b))

On November 30th, 2016, after meeting with the Health Services complainant was placed in quarantine. Plaintiff spent the next 10 days in quarantine Plaintiff was unable to do any activities, was unable to eat or keep any type of food or liquids in his system. (See Ex. 3 & Ex. 4) plaintiff was subsequently removed from quarantine on December 9th, 2016.

Further more plaintiff claims he had been wrongfully treated for Salmonella when he was given anti-biotics on December 5t, 2016, specifically (500 mg twice a day) of ciprofloxican. (see Ex. 5). Accordingly Salmonella is hydration and not anti-biotics.

Because of the events and acts of the United States of America, specifically Lewisburg penitentiary, plaintiff suffered from symptoms of Salmonella poisoning in the likes of chronic diarrhea, abdominal cramps, fever, and the loss of 25lbs., headaches, dehydration, as well as, other bodily pains and sufferings.

Relief

On June 5th, 2017, the Federal Bureau of Prisons offered a settlement under the FTCA claim for the amount of \$100. (See Ex. 6 & 7)

Plaintiff refused the offer and requested a counter offer for \$1500 for \$150 a day pain and suffering for 10 days.

The Bureau of Prisons never responded, hence the plaintiff filed suit under the FTCA.

Now the plaintiff respectfully asks for RELIEF in the amount of \$1000 which equals \$100 per day of damages due to personal pain and suffering plaintiff endured. This Court may look at several cases based upon the same circumstances and negligence committed by the United States in this very same jurisdiction. (e.g. see Rhines v. United States; Johnson v. United States U.S. Dist. Lexis 81976 Civil Action 3:14-cv-753; Cournoyer V. U.S..)

Wherefore, the plaintiff John Elliot, comes before this Honorable Court with a reasonable request for settlement of \$1000 (\$100 per day of pain/suffering) and grant his FTCA complaint which is in this Courts Jurisdiction.

Dated this ___ day of _____, 2017.

Respectfully Submitted,

John Elliot Reg. No. 14797-032
USP COLEMAN 1
P.O. Box 1033
Coleman, FL. 33521

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-229(13) including any attachments must be submitted with this appeal.

From: Elliott John C 14797-032 X-Block USP Lewisburg (SMU)
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL ON 12/27/2016 I became sick due to the negligent acts of the FBOP by failure to provide healthy and safe meals and proper sanitary trays, I have suffered deeply do to that fact some of my symptoms ARE and was headaches, stomach and muscle cramps, loss of sleep, bowel movements (anywhere from 10 to 35 times a day) blood in my stool numbness in my right side etc... I've put in sick call after sick call was told just to drink water I was placed on ciprofloxacin and told by family doctor that can be a very dangerous medication and some of the symptoms may be from that alone I filed a B-P 8 and BP-9 was told it was untimely we was placed on ~~the~~ ciprofloxacin till the 9th during that time was very sick and unable to eat or do regular activities, then Unit Ten was out on vacation for the holidays I feel everything was timely due to those FACTS

1/09/2017
DATE

John C. Elliott
SIGNATURE OF REQUESTER

Part B - RESPONSE

EX#(1)

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 88774122

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

SIGNATURE, RECIPIENT OF REGIONAL APPEAL



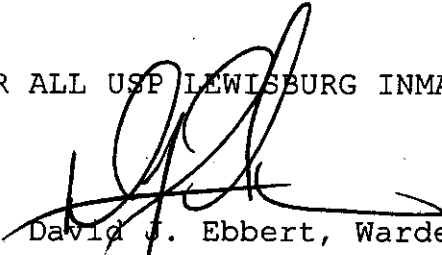


U.S. Department of Justice
Federal Bureau of Prisons
United States Penitentiary
2400 Robert F. Miller Drive
P. O. Box 1000
Lewisburg, PA 17837

SALMONELLA

November 30, 2016

MEMORANDUM FOR ALL USP LEWISBURG INMATE POPULATION

FROM:  David J. Ebbert, Warden
SUBJECT: Gastrointestinal Illness

The purpose of this memorandum is to inform the inmate population of a gastrointestinal condition within the SMU population at USP Lewisburg. Inmates who have presented with symptoms (fever, diarrhea, and stomach cramping) are being isolated as well as a smaller number of unaffected inmates due to being celled and/or in direct contact with affected inmates.

We will continue with a modified schedule to include box lunches through the weekend. Commissary sales will resume on Thursday.

As a reminder, proper hygiene methods should be utilized such as frequent and effective hand washing:

1. Use warm, running water
2. Use soap whenever possible
3. Rub hands together for at least 20 seconds
4. Scrub underneath the fingernails
5. Rinse and then dry

When to wash your hands:

1. After using the toilet
2. Before eating or touching food

Exhibit #2(a)

Chase

Name: ELLIDT

Reg. No: 14797-032

Qtrs: X

The following is in response to your concern over the recent gastrointestinal illness at USP Lewisburg.

Over the pasts few weeks, several inmates at USP Lewisburg have reported symptoms related to gastrointestinal disturbances. Health Services staff have assessed all inmates who reported these symptoms, and they have received appropriate treatments. We continue to remain committed in providing a safe environment for both inmates and staff. As always, if you have any medical concerns, please report them through daily sick call.

1.3.17
Date

S BROWN

EXhibit # 2 (b)

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: ELLIOTT, JOHN C
Date of Birth: 11/05/1981
Encounter Date: 11/30/2016 11:13

Sex: M Race: WHITE
Provider: Fahringer, Matthew NRP

Reg #: 14797-032
Facility: LEW
Unit: B01

EMT/Para - Evaluation encounter performed at Health Services.

SUBJECTIVE:

COMPLAINT 1 **Provider:** Fahringer, Matthew NRP
Chief Complaint: Diarrhea
Subjective: "I've been having diarrhea since Sunday."
Pain: No

EX # 3

OBJECTIVE:

Temperature:

Date	Time	Fahrenheit	Celsius	Location	Provider
11/30/2016	08:26 LEW	98.5	36.9	Oral	Fahringer, Matthew NRP

Pulse:

Date	Time	Rate Per Minute	Location	Rhythm	Provider
11/30/2016	08:26 LEW	91	Via Machine		Fahringer, Matthew NRP

Respirations:

Date	Time	Rate Per Minute	Provider
11/30/2016	08:26 LEW	18	Fahringer, Matthew NRP

Blood Pressure:

Date	Time	Value	Location	Position	Cuff Size	Provider
11/30/2016	08:26 LEW	133/95	Left Arm	Sitting	Adult-large	Fahringer, Matthew NRP

Exam:

General

Affect

Yes: Cooperative

Appearance

Yes: Appears Well, Alert and Oriented x 3

No: Appears Distressed, Appears in Pain, Writhing in Pain

Skin

General

Yes: Within Normal Limits, Dry, Skin Intact, Warmth

ASSESSMENT:

Diarrhea

I/M came to UCR for evaluation of GI symptoms. I/M complaining of fever, abdominal cramps, and 20 episodes of diarrhea. I/M's skin was warm and dry. Vitals were assessed. I/M returned to his cell and will be placed on quarantine.

PLAN:

Disposition:

Follow-up at Sick Call as Needed

Return Immediately if Condition Worsens

Inmate Name: **Case 8:17-cv-02227-RDM-CA Document 1 Filed 12/04/17 Page 8 of 17**
Date of Birth: 11/05/1981 Sex: M Race: WHITE Reg#: 14797-032
Encounter Date: 11/30/2016 11:13 Provider: Fahringer, Matthew NRP Facility: LEW Unit: B01

Follow-up in 12-24 Hours

Patient Education Topics:

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
11/30/2016	Counseling	Access to Care	Fahringer, Matthew	Verbalizes Understanding

Copay Required: No

Cosign Required: Yes

Telephone/Verbal Order: No

Completed by Fahringer, Matthew NRP on 11/30/2016 11:28
Requested to be cosigned by Edinger, Andrew MD/CD.
Cosign documentation will be displayed on the following page.

Ex #3
(cont.)

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: ELLIOTT, JOHN C
Date of Birth: 11/05/1981
Encounter Date: 12/09/2016 09:51

Sex: M Race: WHITE
Provider: Ayers, Jessie PA-C

Reg #: 14797-032
Facility: LEW
Unit: X03

Mid Level Provider - Follow up Visit encounter performed at Special Housing Unit.

SUBJECTIVE:

COMPLAINT 1 Provider: Ayers, Jessie PA-C

Chief Complaint: Diarrhea

Subjective: Inmate states he is feeling much better and has been diarrhea free for the last 3-4 days.

Pain: No

OBJECTIVE:

Exam:

General

Affect

Yes: Pleasant, Cooperative

Appearance

Yes: Appears Well, Alert and Oriented x 3

No: Appears Distressed

Skin

General

Yes: Within Normal Limits

Mouth

Mucosa

Yes: Within Normal Limits

No: Dryness

Ex #4

ASSESSMENT:

Diarrhea, unspecified, R197 - Resolved

PLAN:

Disposition:

Follow-up at Sick Call as Needed

Other:

Inmate to continue with increased fluids and small bland meals for the next several days. Inmate has been without watery diarrhea for the last 3 days. Inmate to follow up as needed. Will remove from isolation.

Patient Education Topics:

Date Initiated Format

12/09/2016 Counseling

Handout/Topic

Diet

Provider

Ayers, Jessie

Outcome

Attentive

Inmate Name: ELLIOTT, JOHN C
Date of Birth: 11/05/1981
Encounter Date: 12/09/2016 09:51

Sex: M Race: WHITE
Provider: Ayers, Jessie PA-C

Reg #: 14797-032
Facility: LEW
Unit: X03

Copay Required: No

Cosign Required: No

Telephone/Verbal Order: No

Completed by Ayers, Jessie PA-C on 12/09/2016 09:53

EX #4
CONF

**Bureau of Prisons
Health Services
Clinical Encounter**

Inmate Name: ELLIOTT, JOHN C
Date of Birth: 11/05/1981
Encounter Date: 12/05/2016 14:22

Sex: M Race: WHITE
Provider: Ayers, Jessie PA-C

Reg #: 14797-032
Facility: LEW
Unit: X01

Mid Level Provider - Follow up Visit encounter performed at Special Housing Unit.

SUBJECTIVE:

COMPLAINT 1 Provider: Ayers, Jessie PA-C

Chief Complaint: Diarrhea

Subjective: Inmate states he continues to have diarrhea. He denies any improvement of symptoms which has been going on for several days.

Pain: No

OBJECTIVE:

Temperature:

Date	Time	Fahrenheit	Celsius	Location	Provider
12/05/2016	14:22 LEW	97.5	36.4		Ayers, Jessie PA-C

Pulse:

Date	Time	Rate Per Minute	Location	Rhythm	Provider
12/05/2016	14:22 LEW	102			Ayers, Jessie PA-C

Exam:

General

Affect

Yes: Pleasant, Cooperative

Appearance

Yes: Alert and Oriented x 3

No: Appears Distressed

Skin

General

Yes: Within Normal Limits

Mouth

Mucosa

Yes: Within Normal Limits

Exam Comments

Good skin turgor

ASSESSMENT:

Diarrhea, unspecified, R197 - Current

PLAN:

New Medication Orders:

Rx#	Medication	Order Date	Prescriber Order

EX #5

Inmate Name: ELLIOTT, JOHN C

Date of Birth: 11/05/1981

Encounter Date: 12/05/2016 14:22

Sex: M Race: WHITE

Provider: Ayers, Jessie PA-C

Reg #: 14797-032

Facility: LEW

Unit: X01

New Medication Orders:

<u>Rx#</u>	<u>Medication</u>	<u>Order Date</u>	<u>Prescriber Order</u>
	Ciprofloxacin Tablet	12/05/2016 14:22	500mg Orally - Two Times a Day x 5 day(s) -- take one tab by mouth twice daily

Indication: Diarrhea, unspecified

Disposition:

Follow-up at Sick Call as Needed

Other:

Inmate to continue with increased fluids and small bland meals. Will start on antibiotic due to duration of symptoms

Patient Education Topics:

<u>Date Initiated</u>	<u>Format</u>	<u>Handout/Topic</u>	<u>Provider</u>	<u>Outcome</u>
12/05/2016	Counseling	Plan of Care	Ayers, Jessie	Attentive

Coplay Required: No

Cosign Required: Yes

Telephone/Verbal Order: No

Completed by Ayers, Jessie PA-C on 12/05/2016 14:26

Requested to be cosigned by Shaw, Megan MD.

Cosign documentation will be displayed on the following page.

EX AS
(cont)

**Bureau of Prisons
Health Services
Cosign/Review**

Inmate Name:	ELLIOTT, JOHN C	Sex:	M	Reg #:	14797-032
Date of Birth:	11/05/1981	Provider:	Ayers, Jessie PA-C	Race:	WHITE
Encounter Date:	12/05/2016 14:22			Facility:	LEW

Cosigned by Shaw, Megan MD on 12/06/2016 08:08.

EX #5
(cont)



U.S. Department of Justice

Federal Bureau of Prisons

Northeast Regional Office

Via Certified and Return Receipt Mail

U.S. Custom House-7th Floor
2nd & Chestnut Streets
Philadelphia, PA. 19106

June 5, 2017

John Elliot, Reg. No. 14797-032
USP Florence
P.O. Box 7000
Florence, CO 81266

EX # 6

RE: Administrative Claim No. TRT-NER-2017-01565

Dear Mr. Elliot:

Your Administrative Claim No. TRT-NER-2017-01565 properly received on December 21, 2016, has been considered for settlement as provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. §2672, under authority delegated to me by 28 C.F.R. §543.30. Damages are sought in the amount of \$50,000.00 based on a personal injury claim. Specifically, you allege you became ill after being served contaminated food at USP Lewisburg.

After careful review of this claim, I have decided a settlement offer will be made in the amount of \$100.00. This amount is based upon our assessment of the relative value of your claim, based on your symptoms and treatment as verified in your medical record, and other factors. This is neither an admission nor denial of government liability.

If this amount is acceptable for settlement, please complete the highlighted portions and sign the enclosed voucher and promptly return it to this office for processing. If the offer is unacceptable, suit may be brought against the United States in the appropriate United States District Court within six (6) months of the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Tafelski", is written over the word "Sincerely,".

Michael D. Tafelski
Regional Counsel

cc: David J. Ebbert, Warden, USP Lewisburg

FMS Form 197
Department of the Treasury

AUTHORIZED FOR LOCAL REPRODUCTION

VOUCHER FOR PAYMENT

Voucher No. _____

WHERE A SETTLEMENT AGREEMENT HAS NOT BEEN EXECUTED
AND ATTACHED OR WHERE A FINAL JUDGMENT IS NOT ATTACHEDSchedule No. _____
Claim No. _____

A. PAYMENT DATA: (PLEASE TYPE OR PRINT CLEARLY)

PAID BY
(For use by
Treasury only.)

- (1) Submitting Agency/Office: Federal Bureau of Prisons
- (2) Agency/Office Mailing Address: USP Lewisburg
- (3) Agency/Office Contact Person and Telephone No.: Controller
- (4) Payee(s): (a) John Elliot, Reg. No. 14797-032
- (5) Taxpayer Identification No., SSN, or EIN of each Payee: (a) _____
- (6) Total Amount: one hundred dollars (\$100.00)

EX #7

(7) Electronic Funds Transfer (EFT) Information:

- (a) Payee Account Name: N/A (d) Bank Name and Address: N/A
- (b) ABA Bank # (9 digits): N/A
- © Payee Account #: N/A
- (d) Checking: N/A Savings: N/A

(8) Briefly Identify Claim:

Alleged personal injury claim of food borne illness at USP Lewisburg Administrative Claim No. TRT-NER-2017-01565

B. ACCEPTANCE BY CLAIMANT(S).

(NOTE: For use ONLY where final judgment has NOT been entered or where claimant has NOT signed another agreement. Use FMS Form 197A where final judgment has been entered or another agreement has been signed by the claimant(s).)

I, (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I (We) further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

(SIGN ORIGINAL ONLY)

, 2017

(Claimant(s) sign above).

C. AGENCY APPROVING OFFICIAL:

This claim has been fully examined in accordance with 28 U.S.C. §2672 and approved in the amount of \$100.00

Signed:

Title: REGIONAL COUNSEL

Date: _____

D. OTHER ACCOUNTING INFORMATION
AND CERTIFICATIONS: (For use by Treasury only.)

DEAR CLERK OF COURTS,

Due to my limited access to a Copy Machine I AM unable to SEND MORE THAN ONE (1) copy of Complaint & exhibits, IF it is NECESSARY for me to do so please feel free to Send me a Letter And I will show it to prison officials in order to send An additional copy to Be served upon defendants.

Please docket my Complaint As Received And I will Send another copy if Requested.

Thank you

~~December 1, 2017~~

John
C. C. C.

11/30/17

John C Elliott
14797-032
United States Penitentiary
Coleman (1) High max
P.O. Box 1033
Coleman, Florida
33521

RECEIVED
SCRANTON

DEC 04 2017

PER  DEPUTY CLERK

MIDDLE

To: William

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SCR

LEGAL
MAIL